

Serial Number: 08/855.895
Inventors: David J. Stephens et al.
Atty: Docket No.: 26552.00028

27. (New) The system of Claim 26, wherein said radar-based projectile detection system operates at a frequency of 8-20 Ghz.

28. (New) The system of Claim 25, wherein said airbag deployment is accomplished across an opening into a room located between said person and said object.

29. (New) The system of Claim 25, wherein said detection system is a shock wave detection system having blast gauges and wherein said object is a concussive shock wave.

REMARKS

The Examiner asserts that patentably distinct species of the claimed invention exist in illustration Figs. 1A and 1B (species A), and in illustration Figs. 2A and 2B (species B). The restriction requirement is respectfully traversed, and reconsideration is requested, on the grounds that the Examiner has not shown that the question of distinctness or independence of each species resides in the claimed subject matter. *See MPEP 806.01.*

Referring to originally-submitted Claim 17 (method claim) and newly submitted Claim 25, it is apparent that these generic claims read upon the elected species (species B), as well as the non-elected species (species A). That is, the generic invention deals with some means of detecting the approach of some destructive object, and reacting to such

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some means of detecting the approach of some destructive object, and reacting to such detection by immediate deployment of an airbag between the object and a person. In the case of the elected species, detection may occur using a radar-based system and the object may be a ballistic projectile. In the case of the non-elected species, detection may occur via a shock wave detection system, using blast gauges for example, and the object may be a concussive shock wave. The commonality between these species are distinctly pointed out in the original application, page 5, line 14-page 7, line 22.

Further, the restriction requirement is traversed on the grounds that the Examiner has not shown any reason why this requirement is justified by the statutory provision that:

If two or more independent *and* distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions.
35 U.S.C. § 121 (emphasis added).

Thus, the requirements of the statute are clear: restriction is proper only when the claims are separate *and* distinct.

The MPEP attempts to rewrite the statute, so that in effect restriction is to be permitted whenever claims are separate *or* distinct. *See MPEP § 803*. Obviously, this is not the same legal test, and encourages many restrictions which are not justified by the statute. The MPEP is not itself a statute or rule, and has not been through the rulemaking formalities required for entry into the Code of Federal Regulations. The MPEP thus cannot override the statute, nor even authoritatively interpret it.

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It is respectfully submitted to the Examiner that the embodiments disclosed in the application are dependent, that is *connected* in design, operation, and effect. In this particular case, the design of the system is altered only with respect to the type of destructive object to be detected, which is analogous to changing the type of sensors at the input of a data acquisition system, for example. However, once the presence of a destructive object is detected, then the processing and reaction to the object may be identical. In the case of the instant invention, the "sensors" in the illustrated embodiments are simply more complex than in the example of a simple data acquisition system. That is, in the case of a ballistic projectile, the "sensor" may be a radar-based transmission and reception system with Doppler signal processing, whereas in the case of a concussive shockwave, the sensors may be simple blast gauges with or without signal processing circuitry, as appropriate.

Since the claims as submitted can be used to describe a generic system which reacts to the presence of a destructive object, as explicitly shown by originally-submitted Claim 17, and newly submitted Claim 25, it is respectfully requested that the Examiner reconsider his restriction requirement and provide a first office action on the merits of the application as originally submitted, to include the newly added claims.

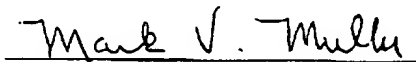
Fee for 1 new independent claim	\$ 82.00
Fee for 4 dependent claims (\$22 x 4)	<u>\$ 88.00</u>
Total	\$170.00
Fee Due (50% of above)	<u>\$ 85.00</u>

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A check in the amount of \$85.00 is herewith submitted for payment of the fee for one new claim with 4 dependent claims. Any deficiency in fees may be covered by drawing from Account No. 10-0447.

The Examiner is cordially invited to telephone the undersigned if an interview would serve to expedite the processing of this application.

Respectfully submitted,
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